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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,954	02/04/2002	David Frederick Lewin	24895B	6057
22889	7590	08/05/2009		
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			EXAMINER PICKETT, JOHN C	
			ART UNIT 3728	PAPER NUMBER
			NOTIFICATION DATE 08/05/2009	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID FREDERICK LEWIN and
MICHAEL BLAISE FAZIO

Appeal 2008-006316
Application 10/066,954
Technology Center 3700

Decided:¹ August 3, 2009

Before DEMETRA J. MILLS, ERIC GRIMES, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants have requested rehearing of the decision entered April 1, 2009. That Decision reversed the Examiner's rejections and entered a new ground of rejection. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Appellants contend that the Decision erred in several ways. Appellants contend that "Sieloff et al. nowhere teaches or suggests strands of any kind, let alone a glass strand in texturized, coiled form as recited in Claim 15" (Req. Reh'g 2). Appellants contend that Sieloff does not teach "texturized, coiled glass strand [which] 'has a density of 5 to 10 lbs/ft³'" (Req. Reh'g 3). Appellants also contend that "there is no 'teaching' that any 'strand' can be withdrawn from any container" (Req. Reh'g 4). Lastly, Appellants contend that "[o]bjection is also made to the Board's reliance on inherency in determining that 'the resulting glass wool' of Sieloff et al. 'will inherently comprise some level of coiling'" (Req. Reh'g 4).

Issue

Have Appellants shown that we misapprehended or overlooked any point in rendering the Decision?

Analysis

Appellants contend that "Sieloff et al. nowhere teaches or suggests strands of any kind, let alone a glass strand in texturized, coiled form as recited in Claim 15" (Req. Reh'g 2).

Claim interpretation is at the heart of patent examination because before a claim is properly interpreted, its scope cannot be compared to the prior art. In this case, Appellants challenge the Decision's interpretation of the phrase "texturized glass strand" as recited in the claims. Therefore,

before addressing the rejection at issue in this appeal, we must determine the proper meaning of the phrase “texturized glass strand.”

Appellants’ Specification defines texturized glass strand as “continuous strand that has been expanded or texturized” (Spec. 1, ll. 29-30). Appellants’ Summary of the Invention states that a “strand of glass fibers” passes through a nozzle and is expanded “so that the filaments are spread apart” (Spec. 2, ll. 26-28). The Specification, page 4, describes that the process of texturizing the glass strand includes texturizer 20 including “a nozzle and a compressed air supply 22 from an air compressor. The air supply 22 advances the strand 12 through an internal passage in the nozzle. The air supply 22 also separates, entangles, and imparts a twist to the fibers of the strand 12 so that the texturized strand 80 emerges from the outlet of the nozzle 20 as a continuous expanded strand. Air is discharged from the nozzle with the texturized strand 80.”

As discussed in the Decision, Sieloff teaches “streams of glass, centrifuged from the spinner, engaged by a vertically downwardly directed annular gaseous blast for attenuating the centrifuged streams to fibers” to produce glass wool (Sieloff, col. 2, ll. 65-68). Upon further review, we find the Examiner has provided no evidence that the process of preparing streams of glass described in Sieloff is equivalent to the process of making texturized glass fibers according to the Specification or that the processes would result in the same texturized product. ((Req. Reh’g 2.))

We are persuaded by Appellants' argument that because Sieloff teaches discontinuous fibers, these do not satisfy the requirement for "glass strand" in claim 15. Appellants' use of texturized glass strand in claim 15, when read in light of the Specification, imposes a requirement for a continuous strand of fiber which is not taught by Sieloff. We have no evidence of record to suggest that Sieloff's strand will inherently be continuous as required. "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

CONCLUSION

Appellants' request for rehearing is granted and the rejection over Sieloff is withdrawn. Currently, no claims are subject to any rejection, since all of the rejections have been reversed.

REHEARING GRANTED

cdc

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